**Before the**
**Federal Communications Commission**
**Washington, DC 20554**

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Facilitating the Provision of | ) | WT Docket No. 02-381 |
| Spectrum-Based Services to Rural | ) | |
| Areas and Promoting Opportunities | ) | |
| For Rural Telephone Companies to | ) | |
| Provide Spectrum-Based Services | ) | |

# COMMENTS OF
# UNITED STATES CELLULAR CORPORATION

George Y. Wheeler
Peter M. Connolly
Holly R. Smith
Holland & Knight LLP
2099 Pennsylvania Avenue, N.W. Suite 100
Washington, DC 20006
(202) 955-3000

February 3, 2003

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## Summary

U.S. Cellular strongly supports the Commission's re-examination of its rules and policies promoting the development and deployment of wireless technologies in rural areas and affording incumbent rural telephone companies viable opportunities to participate in spectrum auctions. Such is a first step towards recognizing the value of regional and rural carriers as an important source of competition in the provision of wireless services to rural population—regional and rural carriers serve the customers that nationwide carriers choose not to serve and they tailor their service offerings to the calling patterns of rural customers.

U.S. Cellular proposes that the Commission adopt geographic service area sizes for new licensed wireless services that are small enough to provide viable initial licensing opportunities for the regional and rural carriers. Geographic service areas that are too large, such as nationwide, REAG or MEA areas, create economic barriers for rural and regional carriers attempting to acquire spectrum at auction. Partitioning and disaggregation do not promote expansion and diversity in spectrum-based services for rural areas—auctioning the spectrum in appropriately small geographic service areas is a more efficient means of distributing spectrum to carriers that are actually going to serve rural customers.

Second, the Commission should favor cellular-style buildout requirements for new spectrum because this policy promotes the construction of cellular systems in previously unserved areas. The Commission should also retain existing buildout

requirements for the spectrum held by incumbent cellular and PCS licensees because PCS providers relied on the PCS buildout rule in making spectrum purchasing decisions.

The Commission should retain the RSA cellular cross-interest rule but increase the attribution threshold from 5 to 20 percent. Finally, because data roaming is increasingly important to rural service providers, the Commission should include the issue of "data roaming" in this proceeding.

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COMMENTS OF
UNITED STATES CELLULAR CORPORATION

United States Cellular Corporation ("U.S. Cellular"), by its attorneys, submits its comments in response to the Commission's Notice of Inquiry ("Notice") [FCC 02-325] in WT Docket No. 02-381, released December 20, 2002.

## Introduction

U.S. Cellular strongly supports the Commission's re-examination of its rules and policies promoting the development and deployment of wireless technologies in rural areas.

The Commission can best serve the fundamental goals of facilitating new and expanded service to rural areas by fostering opportunities for a wide variety of applicants, including regional and rural carriers. Sections 309(j)(3) and (4) of Communications Act of 1934 ("Act") mandate equitable distribution of licenses, economic opportunity for a wide variety of applicants and a commitment to expanded service in rural and underserved areas. These statutory goals fully support adoption of spectrum policies so that regional/rural carriers are not

inhibited or precluded from moving forward with their long-term plans for spectrum-based services because of a lack of regulatory certainty.

We propose that the Commission take the following specific steps to enhance opportunities for expanded deployment of spectrum-based services in rural areas.

- The Commission should recognize that regional and rural carriers are significant providers of wireless services to rural areas in competition with national carriers;
- The Commission should adopt Rural Service Areas as appropriately defining "Rural Areas" for the purposes of determining whether the Commission is meeting its Section 309(j) mandate;
- The Commission should adopt geographic service area sizes for new licensed wireless services which provide viable initial licensing opportunities for the regional and rural carriers directly benefitting the development of rural service;
- The Commission should not rely on partitioning and disaggregation to promote expansion and diversity in spectrum-based services for rural areas because these mechanisms have failed to produce adequate spectrum opportunities for regional/rural carriers that will actually serve rural customers;
- The Commission should consider cellular-style buildout requirements for new spectrum and retain existing buildout requirements for the spectrum held by incumbent cellular and PCS licensees;

- The Commission should retain but modify the RSA cellular cross-interest rule to permit a higher attribution threshold; and
- The Commission should consider the issue of "data roaming" in this proceeding;

## Discussion

### 1. The Commission Should Recognize That Regional and Rural Carriers are an Important Source of Competition in the Provision of Wireless Services to Rural Populations.

There are two broad classes of wireless providers, national and regional/rural. The major regional/rural carriers collectively provide service to approximately 13 percent of the nation's wireless users. See Table 1 hereto. Some examples of regional/rural carriers who each serve over 100,000 subscribers are: ALLTEL, Western Wireless, Qwest, Centennial, Rural Cellular, Leap Wireless, NTELOS, and U.S. Cellular. In addition, there are numerous rural carriers serving local markets, such as Corr, Inland, Mid-Missouri Cellular, Midwest Communications, Northeast Communications, Ramcell and others.

The foregoing share of total U.S. wireless users vastly understates the importance of regional/rural carriers in rural and less dense areas. While the national carriers hold licenses that would enable them to provide service to most of the country, they have generally limited the build-out of their facilities to more dense and urban areas. Tables 2 and 3 hereto shows the size of the population that each of the national carriers is able to provide service for over its own facilities (covered POPS) versus the total national population. National carriers have

generally built-out their facilities to cover an average of slightly less than 3/4ths of the national population. Regional/rural carriers have been left to serve the areas that the national carriers have no interest in.

Market share data prepared on an RSA/MSA basis for 90 of the RSA/MSAs[1] that are served by U.S. Cellular shows the significant combined market share of all regional carriers in each of these 90 RSA/MSAs where regional carriers have the highest market share ranging down to RSA/MSAs where regional carriers have the lowest market share. See Table 4 hereto. In 19 of the 90 RSA/MSAs, national carriers have no presence at all and regional carriers serve 100 percent of the subscribers in the market. In 47 of the 90 RSA/MSAs, regional carriers serve at least 70 percent of the subscribers in the market.[2]

Regional/rural carriers are an important source of service and competition in rural and less densely populated areas. They tailor their service to the needs of subscribers in rural areas in a number of ways. For example, these carriers have identified customers that make almost all of their calls within natural regional footprint areas, which include rural areas, and have built business and spectrum acquisition plans around these customer-calling patterns. Regional/rural carriers provide better coverage over regional/rural areas than do national carriers which means that they can provide higher call quality and fewer dropped calls.

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[1] These 90 RSA/MSAs constitute well over half of the 142 RSA/MSAs that U.S. Cellular provides service in. Data was not currently available for the other RSA/MSAs served by U.S. Cellular. Studies to determine these market shares were conducted between February 2000 and April 2000.
[2] That is, the simple average value of the 90 market shares is equal to 70 percent. The weighted average (using weights determined by 1990 Census population figures for each RSA/MSA) is equal to 64 percent.

Regional/rural carriers offer more retail locations in their areas than do national carriers. They also provide outstanding customer care, innovative services and pricing plans which are intended to appeal to local needs and interests.

Because of the unique and important role of regional/rural carriers in rural areas, our proposals focus on how the Commission can best take advantage of their capabilities to enhance and expand wireless services in rural areas.

2. Rural Service Areas Appropriately Define "Rural Areas" for the Purposes of Determining Whether the Commission is Meeting Its Section 309(j) Mandate.

We propose that the Commission adopt Rural Service Areas ("RSAs") to define "rural areas" in its service rules for spectrum-based services for purposes of determining the extent to which the Commission is meeting its Section 309(j) mandate.[3]

We support adoption of a single definition of rural area that cuts across all wireless services allocated for mobile uses. Without continuity, the Commission would be unable to assess competition in rural areas and properly respond to the mandate of Section 309(j). Carriers offering wireless services should have a brightline definition of rural areas so they can make business decisions about what services they should offer and to whom they should offer these services based upon a consistent expectation of the regulatory policies which apply in such areas.[4] We also support RSAs to define rural areas for the purposes outlined in the

[3] *See Notice* at ¶ 15.

[4] "Non-nodal EAs" and population density calculations based on "persons per square mile," on the other hand, have the disadvantage of being less well known, potentially misunderstood and more administratively cumbersome than RSAs.

Commission's Notice because "...RSAs are defined expressly to distinguish between rural and urban areas."[5] The Commission found in its Seventh Report[6] that its analysis of the competitive conditions in rural areas based on non-nodal EAs, population density and RSAs provided "...remarkably similar estimates."[7] This being the case, the Commission should adopt a RSA definition of "rural areas" because it is widely known, used and accessible in the industry and because it has already been demonstrated to be a workable proxy for analytical purposes.

3. The Commission Should Adopt Geographic Service Area Sizes for New Licensed Wireless Services Which Provide Viable Initial Licensing Opportunities For the Regional and Rural Carriers Directly Benefitting the Development of Rural Service.

The selection of small geographic service areas preserves opportunities for regional/rural carriers to provide an important source of competition, variety and diversity in rural and less densely populated areas. As the Commission stated in its Lower 700 MHz Report and Order, "...smaller areas also may correspond to the needs of many customers, including customers of regional and rural providers."[8] The Commission should recognize in its spectrum policy that the adoption of large geographic service areas, such as nationwide, REAG or EAG licensing, do not meet the needs of customers served by regional and rural carriers and that adoption of small geographic service areas is appropriate to meet the needs of these customers.

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[5] *See Notice* at n.65.
[6] *See* Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, *Seventh Report*, 17 FCC Rcd 12985 at 13020-21 (2002) (*"Seventh Report"*).
[7] *See Notice* at ¶ 15.
[8] Reallocation and Service Rules for the 698-746 Spectrum MHz Band C (Television Channels 52-59, GN Docket No. 01-74, Report and Order, FCC 01-364, released January 18, 2002, ¶ 96.

The selection of smaller geographic service area size also helps to avoid the exclusion of regional/rural carriers from acquiring spectrum at auction in bands where only large geographic service areas are permitted. The problem for regional/rural carriers is that bidding for a large geographic service area license, such as a nationwide, MEA or EAG license, requires access to financial resources which are either unavailable or present highly risky financial challenges. This means that the Commission's selection of large geographic service areas can have the effect of precluding bidding and thereby depriving regional/rural carriers of realistic opportunities to obtain spectrum. Also, even if regional/rural carriers were able to obtain financing to bid on a large geographic service area license, they are disadvantaged by the disproportionate financial risk and associated transactional costs of partitioning spectrum which is not essential to their customers' needs.

One of the important issues before the Commission is how to encourage licensing opportunities which promote, through market-based approaches, the competitive development of advanced technologies in all areas of the country. Rather than make decisions about geographic service area size on an ad hoc basis, the Commission should recognize in its spectrum policies the importance of adopting service area sizes appropriate for regional/rural carriers to provide them the regulatory certainty they need to move forward with long-term planning for the spectrum-based services in the areas they serve. By affording realistic bidding opportunities to a variety of applicants, the adoption of small service area sizes such as EA or MSA/RSA areas will enhance competition and promote early

deployment of advanced technologies in a manner consistent with the Commission's statutory objectives under Section 309(j) of the Act.

4. The Commission's Policies on Partitioning and Disaggregation Are Not Adequately Effective in Promoting Expansion and Diversity in Spectrum-based Services for Rural Areas.

A spectrum policy supporting adoption of smaller geographic service area sizes so that regional/rural carriers have an opportunity to participate in spectrum auctions is also needed because the Commission's partitioning and disaggregation rules have not been effective tools for these carriers to acquire spectrum resources.

It seems self evident that there is a reasonable likelihood that national and super-regional carriers will simply choose to warehouse spectrum won at auction even though they may have no near-term plans for its use. They probably conclude that it is less costly to retain underused spectrum rights than to risk that a sale of spectrum rights will deprive such carriers of spectrum which might be needed at some future date. In addition, it is likely that such carriers will be focused on deploying technologies and capturing market share in metropolitan markets for many years after licenses are initially awarded so that disaggregation and partitioning are simply not options during this period, if ever. Another problem is that national/super-regional carriers are highly unlikely to disaggregate and to partition spectrum to regional/rural carriers that are actual or potential competitors. In the event there is any disposition at all to dispose of spectrum, national/super-regional carriers are likely only to do so pursuant to affiliate

relationships which limit or prohibit competition between the affiliate and that national carrier.

In sum, regional/rural carriers are likely to be precluded, or at a minimum will encounter substantial (and perhaps insurmountable) delays and costs in their attempts to obtain spectrum rights from national/super-regional carriers. Adoption of our proposal will help enhance competition and will promote the early deployment of advanced technologies by enabling regional/rural carriers to bid directly on smaller geographic service area licenses.

5. The Commission Should Consider Cellular-style Buildout Requirements for New Spectrum and Retain Existing Buildout Requirements for the Spectrum Held by Incumbent Cellular and PCS Licensees.

The Commission's Notice considers numerous possible regulatory incentives and requirements to "facilitate service" in rural areas including variations on the forms of construction benchmarks or buildout standards currently applicable to cellular and PCS carriers.[9] It is laudable that the FCC is considering these issues. However, too many of the approaches suggested by the Commission reflect an insufficient understanding of the problems faced by these carriers now providing rural service. As the holder of 103 RSA cellular licenses and 28 BTA PCS licenses, U.S. Cellular has extensive experience with rural services issues and suggests the following guidelines for the Commission to consider in improving rural service.

[9] Cellular carriers are given five years to build out their markets, which are then opened to new applicants in "unserved areas." See Section 21.947 of the FCC's Rules. Broadband PCS licensees are entitled to retain licenses for their entire BTA and MTA service areas after they meet percentage "population coverage" requirements. See Section 24.203 of the FCC's Rules. (10 MHz PCS licensees must cover 1/4th of the population of their BTA service areas within five years of licensing; 30 MHz PCS licensees must serve 1/3rd of their MTA or BTA population within five years, 2/3rds of their population within ten years),

The Commission should leave existing cellular and PCS "buildout" requirements alone. Both sets of rules have worked well over time. The cellular rules provide that "unserved areas" may be served by new applicants after the initial five year "build out" period has expired. And, indeed, this has permitted a certain number of small, independent cellular systems to be constructed in previously unserved areas, in some instances by rural carriers. However, in the main, the rule has permitted established carriers to expand their systems gradually as additional cells could be justified economically. The coverage of various U.S. Cellular's systems, for example, have been expanded 269 times through the filing of "unserved area" applications over the past ten years.

The Commission should understand that incumbent wireless carriers want to and will build cells anywhere such cells make economic sense. And, generally speaking, in a world of national and regional carriers, tiny one or two cell systems constructed in areas left unserved after the initial build out period make little economic sense, which is why there are so few of them. The present cellular unserved area rules recognize this reality by allowing incumbent carriers, as well as new entrants, to file unserved area applications.

The PCS licensing requirements provide even more flexibility to incumbent carriers, by permitting licensees to build out their systems at their own pace after meeting their initial construction requirements. Though the PCS rules admittedly lack the "unserved area" safety valve, there is no reason to expect that creating it now would result in any substantial change from what has occurred in the cellular

service, that is, the likeliest "unserved area" applicants would remain the incumbent licensees, owing to the obvious economics of scale and scope that such licensees can bring to bear.

Moreover, there is an additional and powerful reason not to alter the PCS rules to throw open "unserved" PCS service areas to new applicants, namely the reasonable expectation that PCS licensees had when they participated in auctions and that subsequent buyers had when purchasing such licenses, namely that they were purchasing the right to serve entire MTAs and BTAs. To change the rules now would be unfair in the extreme. Moreover, it would be highly counterproductive by adversely influencing the economic health of the wireless carriers, especially those providing service in rural areas.[10] For the Commission now to take away some of rural carriers' potential service territory would only injure rural carriers.

Also, for the Commission to open remaining RSA "unserved areas" to "free for all" licensing on a "commons" basis would be similarly ill advised. Areas still remaining "unserved" twenty years after the cellular licensing process began are obviously the most rural and "uneconomic" territory left. If they are ever going to be served, it will require either changes in such areas' economic circumstances, or subsidies (such as through the universal service funding system for Wireless Eligible Telecommunications Carriers), or changes in cellular technical rules which would permit more extensive coverage for the same investment. However, opening up such areas to multiple competing licensees would have precisely the opposite of

[10] See, e.g., "Rural Cellular Delisted," RCR Wireless News, December 18, 2002 (reporting the "delisting" by NASDAQ of the stock of Rural Cellular Corporation, a prominent rural wireless company, owing to its drop in value).

the desired effect, that is, it would discourage the provision of service, for the obvious reason that it would further reduce any one licensee's chances of earning a reasonable rate of return on the new cell.

U.S. Cellular supports licensing wireless spectrum to be allocated in the future, such as third generation spectrum, on an EA or MSA/RSA basis for the reasons given in Section 3 above, namely that relatively smaller service areas permit diverse entities, including regional and rural carriers, to seek licenses and construct systems. Further, U.S. Cellular would have no objection to cellular-style build out requirements for such allocations, provided auction bidders understood from the outset what they were buying and what buildout requirements would apply. However, existing cellular and PCS build out requirements should be left in place, as being best calculated to lead to new service in rural areas.

### 6. The RSA Cellular Cross Interest Rule Should Be Retained, But Modified To Permit a Higher Attribution Threshold.

The Commission's Notice[11] asks whether the "retention of the cellular cross interest rule for RSAs advances spectrum-based services to rural areas" and seeks comments on whether the rule should be further "amended." U.S. Cellular believes that the rule should be retained but amended to allow more flexible treatment of non-controlling cross interests.

U.S. Cellular supports retention of a modified version of Section 22.942 of the FCC's Rules, the cellular cross interest rule. U.S. Cellular supports the rule as is,

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[11] *See Notice* at ¶ 24.

except that the Commission should raise, from 5 percent to 20 percent, the ownership interest which an individual or entity controlling a cellular licensee may have in its cellular competitor. U.S. Cellular would also suggest the adoption of "waiver" criteria for the cellular cross interest rule similar to that previously found in Note 3 to (now expired) Section 20.6 of the FCC's rules. Under those criteria, minority interests which exceeded of the "attribution" standards of Section 20.6 could be approved by the Commission, provided the "single majority shareholder" test and other waiver criteria of Note 3 were met and provided that the Commission, on a case by case basis, decided that a given minority interest served the public interest.

As the Commission has noted previously, the cellular cross interest rule was adopted in 1991 when cellular carriers were the "predominant providers of mobile voice services."[12] In order to make certain that the cellular industry would remain competitive in a duopoly environment, the Commission adopted the predecessor rule to Section 22.942, by which it sought to ensure that the licensee on one frequency block should not own an interest in the other frequency block in the same market.[13]

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[12] See In the Matter of 1998 Biennial Regulatory Review – Spectrum Aggregation Limits for Wireless Telecommunications Carriers WT Docket No. 98-105, Notice of Proposed Rulemaking, 13 FCC Rcd 25132, 25137 (1998).

[13] Amendment of Part 22 of the Commission's Rules to Provide for the Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules, CC Docket Nos. 90-6, 85-388, First Report and Order and Memorandum Opinion and Order On Reconsideration, FCC Rcd 6185, 6228-29 (1991).

U.S. Cellular believes that there are still valid reasons to have a rule which prohibits one person from controlling both cellular licensees in the same RSA market, despite the action the Commission took in 2001 with respect to the spectrum cap and the cellular cross interest rule in MSAs.[14]

There is no conceivable situation in which the public interest would be better served in a given RSA by having a monopoly cellular provider than by having competition in the provision of cellular service. Also, there are still cellular markets, particularly in rural areas, in which no PCS carrier has initiated service. In such markets, a prohibition on a cellular monopoly is still a valuable competitive safeguard, as it was in 1991. Finally, by preventing one carrier, often a large "national" carrier, from owning both cellular licenses in a given RSA, the cross interest rule increases the chances that a small business and/or rural telephone company will be able to acquire one of the two RSA cellular licenses.

The Commission should, however, recognize that there have been significant changes in the wireless market structure since 1991, namely the emergence of PCS and ESMR services in much of the country, which do justify a relaxation of Section 22.942's most restrictive aspect, the rule's prohibition on a party which controls a licensee in a market from having any interest exceeding five percent, including a non-controlling interest, in the other cellular licensee in that market. That prohibition can be modified by simply raising the cross interest "attribution threshold" in Section 22.942(a) to 20 percent. By so doing, the FCC would raise the

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[14] See 2000 Biennial Regulatory Review: Spectrum Aggregation Limits for Commercial Mobile Radio Services WT Docket NO. 01-14, Report and Order, 16 FCC Rcd 22668 (2001) ("Spectrum Cap Order"), recon. pending.

level of the cellular cross ownership rule "exemption" to the 20 percent spectrum cap attribution exemption formerly set forth in the PCS rules, specifically in Section 20.6(d)(2). There is no good reason why the cellular rules should not be the same as the former PCS rules in this regard.

In 1999, when the Commission adopted the 5 percent attribution limit for the cellular cross interest rule, the FCC merely asserted, without citing any supporting evidence, that allowing a cellular licensee to hold up to a 20 percent non-controlling minority interest in its competitor "would in fact pose a substantial threat to competition," while concluding that a 5 percent cellular cross interest "would [not] pose a significant threat to competition."[15]

In the 2001 Spectrum Cap Order the Commission cited, as a reason for retaining the 5% attribution ownership benchmark, its earlier, unsupported conclusion in the Biennial Review Order referred to above, and made the comparable assertion, again without evidence, that "significant cross interests" between RSA competitors would create a "significant incentive" for the competitors not to compete as "vigorously" as they would otherwise.[16]

Given that those unsupported assertions are the only present basis for maintaining the ownership attribution benchmark and given the lack of any evidence that minority cross interests of exceeding the current benchmark would in

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[15] See 1998 Biennial Regulatory Review: Spectrum Aggregation Limits for Wireless Telecommunications Carriers, WT Docket No. 98-205, Report and Order, 15 FCC Rcd 9219, ¶73, ¶74 (1999) ("Biennial Review Order")

[16] Spectrum Cap Order, at ¶91. The Commission has never explained why a carrier owning 100% of its license would not "compete vigorously" with a competitor in which it had a 10% interest on why that 10% interest would inhibit the competitor from equal competitive efforts.

fact pose any threat to competition, U.S. Cellular again suggests the benchmark should be increased to 20%.

U.S. Cellular also suggests that the Commission should incorporate the "single majority shareholder" waiver test from Note 3 to former Section 20.6 into Section 22.942. It may be that situations will arise in which a party controlling a cellular licensee may acquire a minority interest in excess of 20 percent in a competitor controlled by a single majority shareholder under circumstances in which there is no actual threat to competition.[17]

There is, we submit, also no good reason why cellular cross ownerships in such circumstances could not be analyzed in accordance with the criteria set out at Note 3 to Section 20.6 to determine if such an interest could be retained.

7. The Commission Should Consider The Issue of "Data Roaming" In This Proceeding.

As will be discussed below, one matter which will be of crucial importance to rural subscribers will be "data roaming," that is, the ability of wireless subscribers to transmit and receive data as well as voice in a roaming context. The Commission should, in this proceeding, take the first steps to ensure that the subscribers of rural wireless carriers do have the ability to transmit and receive data as well as voice when they roam on the systems of larger carriers.

[17] Note 3 to Section 20.6 requires a determination (1) that there is a single majority shareholder; (2) that the minority interest will not affect the local market anti-competitively; (3) that the minority interest holder is not involved in the operations of the licensee; and (4) that grant of the waiver would serve the public interest.

In considering the "data roaming" issue, the Commission must be cognizant of the continuing consolidation of the mobile telephone industry at the national level. As the Commission has repeatedly recognized, six influential "nationwide" wireless carriers have emerged in recent years, namely AT&T Wireless, Sprint PCS, Nextel, Cingular, Verizon Wireless and T-Mobile (formerly known as Voicestream).[18] The emergence of these national carriers, with all of the market power that their scale and scope has generated and will continue to generate, is a qualitative change in the wireless marketplace from the fragmented systems of a decade ago.

All CMRS carriers, including national carriers, plan to provide high speed data services. The national carriers will, of course, naturally focus on the urban and suburban markets where most of their subscribers reside and concentrate their system improvement efforts there. The mid-sized and small carriers implementing data services will be dependent on roaming relationships to enable their customers to receive data as well as voice services outside their regional or local coverage areas.

U.S. Cellular's concern, previously noted in the Commission's "automatic roaming" proceeding,[19] is that some of the larger "nationwide" carriers could at some time in the future refuse to sign roaming agreements with regional and rural carriers on reasonable terms, which would effectively preclude customers of these

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[18] See, e.g. Seventh Competition Report, 17 FCC Rcd 12985 (2002).

[19] *See* In the Matter of Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services, Notice of Proposed Rulemaking, WT Docket No. 00-193, FCC 00-361, 15 FCC Rcd 21628 (2000).

carriers from roaming in the markets of the national carriers. This in turn might have the effect of driving customers away from regional/rural carriers.

U.S. Cellular acknowledges that its previous negotiations with larger carriers have not reflected any such anti-competitive practices, particularly with respect to voice services, although U.S. Cellular has received indications from certain national carriers that they are not inclined to enter into "data roaming" agreements at this time. If in the future the larger carriers do seek to exploit their national "reach" by withholding data roaming agreements or exacting onerous charges, then the Commission, we believe, should now step in to preserve competitive equality and the rights of regional/rural carriers by enforcing fairness in the roaming marketplace.

Vigorous use of the anti-discrimination provisions of Sections 201 and 202 of the Communications Act in response to formal complaints, perhaps coupled with a limited requirement to conduct good faith negotiations dealing with data roaming backed by effective Commission enforcement, may be the best means of meeting such a threat to competition, should it arise.

U.S. Cellular recognizes that this proceeding is perhaps not the appropriate one to consider remedies for a problem which has just begun to emerge. However, it is definitely not too early for the Commission to provide some guidance on this issue and we ask other rural and mid-sized carriers to share their experiences with respect to preliminary data roaming negotiations.

## Conclusion

We applaud the Commission for addressing in these proceedings possible changes in its rules and policies to implement the mandates in Sections 309(j)(3) and (4) of the Act regarding expansions of spectrum-based services in rural areas. We agree with the statement in the Commission's Notice that "...it may be economically inefficient, and harmful to customers, to require for each wireless service the same number of competitors in urban and rural areas."[20] The fact is that regional and rural carriers play an important role in providing wireless service in rural and less densely populated areas. This means that the Commission should avoid adopting rules and policies which inadvertently deny opportunities for these regional and rural carriers to use spectrum resources to expand their footprints, to increase capacity or to offer advanced services. The proposals which have been presented above should be adopted to provide realistic opportunities for regional and rural carriers to continue to fulfill their vital role in the provision of rural spectrum-based services.

Respectfully submitted,

UNITED STATES CELLULAR CORPORATION

By _____

George Y. Wheeler
Peter M. Connolly
Holly R. Smith

Holland & Knight LLP

[20] Notice at ¶ 25.

2099 Pennsylvania Avenue, N.W. Suite 100
Washington, DC 20006
(202) 955-3000

February 3, 2003

WAS1 #1154073 v2

# ATTACHMENTS

**Table 1**
Number of Subscribers by Major Regional and National Wireless Carriers

| Carrier | Subscribers | | |
|---|---|---|---|
| Major independent regional/rural carriers: | | | |
| ALLTEL | 7,558,929 | | |
| U.S. Cellular* | 3,943,000 | | |
| Western Wireless | 1,176,100 | | |
| Qwest | 1,084,000 | | |
| Centennial | 349,800 | | |
| Rural Cellular | 702,797 | | |
| Leap Wireless | 1,496,733 | | |
| | 16,311,359 | % of Total | 12.57% |
| *does not U.S. Cellular's Chicago Acquisition | | | |
| | | | |
| National carriers | | | |
| Verizon | 31,521,000 | | |
| Cingular | 22,076,000 | | |
| AT&T Wireless | 20,154,000 | | |
| Sprint PCS | 14,510,000 | | |
| Nextel | 10,116,400 | | |
| T-Mobile | 8,896,000 | | |
| | 107,273,400 | % of Total | 82.68% |
| Total US Subs | 129,750,859 | | |

Source: *Wireless 411,* UBS Warburg, January 22, 2003 at 20

**Table 2**
Licensed POPs as a Percent of National POPs for National Carriers

| | | Percent of National POPs 285,390,300 |
|---|---|---|
| National carriers | Licensed POPs | |
| Verizon | 252,000,000 | 88.30% |
| Cingular | 219,000,000 | 76.74% |
| AT&T Wireless | 258,000,000 | 90.40% |
| Sprint PCS | 208,168,000 | 72.94% |
| Nextel | 229,048,000 | 80.26% |
| T-Mobile | 237,894,000 | 83.36% |

* Source: *Wireless 411,* UBS Warburg, January 22, 2003 at 14. National population from 2000 Census

**Table 3**
Covered POPS as a Percent of Licensed POPs for National Carriers

| National carriers | Covered POPs | Percent of National POPs 285,390,300 |
|---|---|---|
| Verizon | 227,000,000 | 79.54% |
| Cingular | 216,000,000 | 75.69% |
| AT&T Wireless | 205,000,000 | 71.83% |
| Sprint PCS | 198,000,000 | 69.38% |
| Nextel | 197,000,000 | 69.03% |
| T-Mobile | 211,000,000 | 73.93% |

* Source: *Wireless 411,* UBS Warburg, January 22, 2003 at 14 and 15.

**Table 4**
**Market Share of Regional Carriers in Selected U.S. Cellular Markets Ordered From Highest Market Share to Lowest[25]**

| RSA/MSA | Market Share of All Regional Carriers (%) |
|---|---|
| IA RSA 1 | 100 |
| IA RSA 2 | 100 |
| IA RSA 3 | 100 |
| IA RSA 11 | 100 |
| IA RSA 12 | 100 |
| IA RSA 13 | 100 |
| IA RSA 14 | 100 |
| IA RSA 16 | 100 |
| MO RSA 3 | 100 |
| MO RSA 5 | 100 |
| MO RSA 15 | 100 |
| MO RSA 16 | 100 |
| VT RSA 2 | 100 |
| OK RSA 8 | 100 |
| Lacrosse MSA | 100 |
| WI RSA 7 | 100 |
| WI RSA 8 | 100 |
| Cumberland MSA | 100 |
| PA RSA 10 | 100 |
| GA RSA 14 | 99.8 |
| WV RSA 3 | 99.4 |
| WI RSA 10 | 99 |
| IA RSA 6 | 97.4 |
| OR RSA 6 | 97.4 |
| Lynchburg MSA | 96.2 |
| OK RSA 6 | 96.1 |
| NC RSA 13 | 95.7 |
| NC RSA 11 | 94.4 |
| NC RSA 14 | 94.4 |
| WI RSA 9 | 94.4 |
| TN RSA 4 | 93.3 |
| NC RSA 8 | 92.7 |
| NC RSA 10 | 92.5 |
| Jacksonville MSA | 92.4 |
| OR RSA 3 | 90 |
| Charlottesville MSA | 87.4 |
| OK RSA 10 | 82.8 |
| Tallahassee MSA | 79 |

[25]Source: U.S. Cellular data based on studies conducted between February 2000 and April 2000. Subscribers served by regional affiliates of national firms are included as subscribers of national firms, i.e., the market shares of regional firms reported above are market shares for unaffiliated regional firms. The total market share of all national firms in any RSA/MSA (including affiliates of national firms) is equal to 100 percent minus the number reported in the above table.

| | |
|---|---|
| IA RSA 9 | 78 |
| Hagerstown MSA | 77.3 |
| Gainesville MSA | 75.9 |
| Wilmington MSA | 75.1 |
| Dubuque MSA | 73 |
| Waterloo MSA | 71.4 |
| OK RSA 4 | 71.2 |
| IA RSA 5 | 70.1 |
| Madison MSA | 65.5 |
| IA RSA 4 | 65.3 |
| Iowa City MSA | 64 |
| Sheboygan MSA | 64 |
| CA RSA 1 | 62.5 |
| Lawton MSA | 61.8 |
| VA RSA 3 | 61.1 |
| WV RSA 4 | 60.6 |
| IL RSA 4 | 57.9 |
| TX RSA 20 | 56.5 |
| ID RSA 5 | 55.4 |
| Yakima MSA | 55.4 |
| ID RSA 6 | 55.3 |
| Wichita Falls MSA | 55 |
| Davenport MSA | 54.9 |
| Cedar Rapids MSA | 54.8 |
| Roanoke MSA | 53.4 |
| IA RSA 10 | 53.3 |
| Des Moines MSA | 53.2 |
| Ashville MSA | 53 |
| WA RSA 5 | 50.3 |
| TN RSA 7 | 50 |
| WA RSA 6 | 48.2 |
| IL RSA 1 | 45.7 |
| Rockford MSA | 44.3 |
| OK RSA 9 | 43.8 |
| Richland MSA | 42 |
| OH RSA 9 | 41.9 |
| Columbia MSA | 40.8 |
| NH RSA 2 | 40.6 |
| Laredo MSA | 39.5 |
| Milwaukee MSA | 37.8 |
| Peoria MSA | 37.6 |
| Kenosha MSA | 37.1 |
| IL RSA 3 | 36.9 |
| Tulsa MSA | 35.5 |
| Knoxville MSA | 35.1 |
| OR RSA 2 | 34.7 |
| Fort Pierce MSA | 31.4 |
| IA RSA 7 | 30.4 |
| Victoria MSA | 27.9 |
| Corpus Christi MSA | 21.1 |
| WA RSA 4 | 11.7 |
| NC RSA 4 | 11.4 |